

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SETH D. HARRIS, Acting¹ Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

DAYTON IMAGING SOLUTIONS, INC.,
BRYAN BELDEN, and the DAYTON IMAGING:
SOLUTIONS, INC. SIMPLE IRA PLAN

Defendants.

CONSENT ORDER AND JUDGMENT

Plaintiff Seth D. Harris, Acting Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001, *et seq.*, filed a complaint against defendants Dayton Imaging Solutions, Inc. ("Dayton Imaging Solutions") and Bryan Belden ("Belden") alleging breaches of their fiduciary responsibilities under ERISA §§ 101, 105, 403, 404, 406, and 412 with respect to the Dayton Imaging Solutions, Inc. SIMPLE IRA Plan ("Plan").

Dayton Imaging Solutions and Belden have waived service of process of the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action.

The plaintiff and defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by plaintiff of any penalty pursuant to ERISA

¹ By operation of law, Seth D. Harris is substituted for former Secretary of Labor Hilda L. Solis. FED. R. CIV. P. 25(d).

§ 502(I), 29 U.S.C. § 1132(I), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA § 502(I) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Order and Judgment.

Belden has paid \$7,499.78 to the Plan since this litigation was initiated. These monies represent unremitted employee contributions owed to the Plan.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Dayton Imaging Solutions and Belden are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Dayton Imaging Solutions and Belden are liable for the fiduciary breaches they committed that resulted in \$35,844.36 losses to the Plan.
3. The \$7,499.78 restored by Belden from August 16, 2012, to January 14, 2013, shall be used to offset the losses set forth in paragraph 2 above.
4. Within thirty days of the entry of the Consent Order and Judgment, Dayton Imaging Solutions and Belden shall pay \$10,389.33, which represents \$3,812.52 in unremitted employee contributions and \$6,576.81 in lost opportunity costs calculated through April 30, 2013. All monies restored to the Plan shall be allocated to the Plan participants, excluding Belden, who: (1) were employees of Dayton Imaging Solutions, (2) were Plan participants during the period July 6, 2005, through October 20, 2010, and (3) had voluntary employee contributions withheld from their pay for contribution to the Plan during this period and such

contributions were not remitted to the Plan. Dayton Imaging Solutions and Belden shall allocate the aforementioned money to the Plan's participants in an amount equal to the unremitted employee contributions and lost opportunity costs owed to each participant. Defendants shall provide the Secretary with satisfactory proof of these payments to the Plan participants within thirty days of the entry of the Consent Order and Judgment by sending cancelled checks to Employee Benefits Security Administration Regional Director L. Joe Rivers ("EBSA Regional Director") at 1885 Dixie Hwy, Ste. 210, Ft. Wright, Kentucky 41011-2664.

5. In addition to the losses owed the Plan, as set forth in paragraph 2, above Belden is owed \$9,842.25 in unremitted employee contributions and \$8,153.00 in lost opportunity costs calculated through April 30, 2013, as a result of his failure to remit and to timely remit employee contributions to the Plan on his own behalf. Belden hereby waives the restoration of \$17,995.25 to his individual Plan account as part of the resolution of this matter.

6. Belden has initiated the termination of the Plan. Belden shall complete termination of the Plan in accordance with ERISA. His responsibilities with respect to terminating the Plan shall include, but not be limited to, causing the distribution of the Plan's assets to the Plan participants and filing all appropriate documents with the various government agencies. Within thirty days of the entry of this Consent Order and Judgment, Belden shall provide satisfactory proof of such termination to the EBSA Regional Director at the address provided in paragraph four above.

7. Upon the completion of the Plan's termination process, Dayton Imaging Solutions and Belden shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to any employee benefit plan subject to ERISA.

8. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

9. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

10. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

DATED May 29, 2013
Michael Newman
UNITED STATES MAGISTRATE JUDGE

The parties hereby consent to the entry of this consent order and judgment:

FOR THE ACTING SECRETARY OF LABOR:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

K. M. Wilemon
KEVIN M. WILEMON
Attorney

DATED: 5/29/13

P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Rm. 844
Chicago, IL 60604

FOR THE DEFENDANTS:


DAYTON IMAGING SOLUTIONS, LLC

DATED: 5/29/13

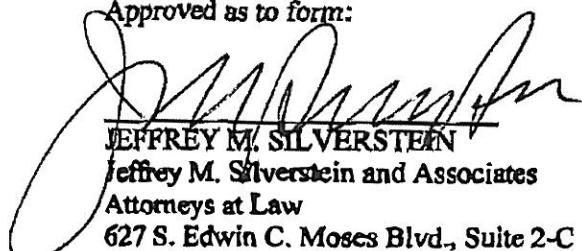
By: Bryan Belden

Its: President


BRYAN BELDEN

DATED: 5/29/13

Approved as to form:


JEFFREY M. SILVERSTEIN
Jeffrey M. Silverstein and Associates
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Dayton, OH 45417
Attorneys for Defendants

DATED: 5/29/13